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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**WILD FISH CONSERVANCY**

Plaintiff,

v.

**NATIONAL MARINE FISHERIES  
SERVICE, et al.**

Defendants.

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Case No.: 3:16-CV-00553-MO

**JOINT MOTION FOR VOLUNTARY  
DISMISSAL WITH PREJUDICE  
UNDER RULE 41(a)(2)**

Plaintiff Wild Fish Conservancy (the “Conservancy”) and Federal Defendants, National Marine Fisheries Service, Samuel D. Rauch III,\* in his official capacity as Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, United States Department of Commerce, and Wilbur L. Ross,\* in his official capacity as Secretary of the United States Department of Commerce (collectively “Federal Defendants”) jointly move this Court to dismiss this action with prejudice under Federal Rule of Civil Procedure 41(a)(2). In support of this Joint Motion, the Conservancy and Federal Defendants (collectively, the “Parties”) state as follows.

The Conservancy filed its Complaint on March 31, 2016, ECF No. 1, and its First Amended Complaint on June 27, 2016, ECF No. 10, alleging that Federal Defendants funded hatchery programs under the Mitchell Act, 16 U.S.C. §§ 755–56, in violation of the Endangered Species Act (“ESA”) and the National Environmental Policy Act (“NEPA”). The National Marine Fisheries Service issued a biological opinion and incidental take statement under section 7 of the ESA for Mitchell Act hatchery programs on January 15, 2017. The Conservancy filed its Second Amended Complaint on June 30, 2017, ECF No. 36, which alleges three causes of action under the ESA, while removing one ESA cause of action and the sole NEPA cause of action that had been alleged in the First Amended Complaint. The Conservancy recognizes that Biological Opinion and Incidental Take Statement issued by the National Marine Fisheries Service on January 15, 2017, provides and renders moot much of the relief initially sought in this action, but the Conservancy has asserted its intent to seek an award of attorneys’ fees, costs, and expenses incurred in this matter under section 11(g)(4) of the ESA, 16 U.S.C. 1540(g)(4).

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\* Pursuant to Federal Rule of Civil Procedure 25(d), Samuel D. Rauch III, in his official capacity as Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, and Wilbur L. Ross, in his official capacity as Secretary of the United States Department of Commerce, are substituted as Federal Defendants.

As the Parties have represented in their status reports to the Court, the Parties have been involved in discussions in an effort to resolve the outstanding issues in this case. Those negotiations have resulted in the Parties' execution of a Settlement Agreement that is being filed as an attachment to the [Proposed] Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2), submitted herewith and in Microsoft Word format to [MOpropdoc@ord.uscourts.gov](mailto:MOpropdoc@ord.uscourts.gov).

As set forth in the Settlement Agreement, the Parties entered into the Settlement Agreement without any admission of fact or law. The Parties consider the Settlement Agreement to be a fair, adequate, and reasonable resolution of the Conservancy's assertion to an entitled to an award of attorneys' fees, costs, and expenses. Accordingly, the Parties believe that entering into the Settlement Agreement is in the interest of the public, the Parties, and judicial economy.

The proposed order and the Settlement Agreement provide that this Court shall retain jurisdiction for the sole purpose of enforcing the terms of the Settlement Agreement. *See* Settlement Agreement, ¶ 3; *and see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994). The validity of the Settlement Agreement is dependent upon this Court's entry of the [Proposed] Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2), submitted herewith and in Microsoft Word format to [MOpropdoc@ord.uscourts.gov](mailto:MOpropdoc@ord.uscourts.gov). *See* Settlement Agreement, ¶ 2. Upon entry of the [Proposed] Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2), this case will be dismissed with prejudice.

NOW THEREFORE, the Parties, by and through their undersigned counsel, jointly request that the Court enter the attached [Proposed] Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2), and thereby order that:

JOINT MOTION FOR VOLUNTARY DISMISSAL

(1) Subject to and in accordance with the terms and conditions of the Settlement Agreement attached as Exhibit A to the Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2), this matter is voluntarily dismissed with prejudice as to the three causes of action alleged in the Second Amended Complaint; and

(2) This Court shall retain jurisdiction over this case for the sole purpose of enforcing the terms of the Settlement Agreement attached to the Order Granting Joint Motion for Voluntary Dismissal With Prejudice Under Federal Rule of Civil Procedure 41(a)(2). *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

RESPECTFULLY SUBMITTED this 30th day of June, 2017.

s/ Brian A. Knutsen

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*Attorneys for Federal Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the attorneys of record.

s/ Brian A. Knutsen

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